



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,280	10/08/2001	Alex Ulrich	155696-0034	5788

1622 7590 02/24/2003

IRELL & MANELLA LLP
840 NEWPORT CENTER DRIVE
SUITE 400
NEWPORT BEACH, CA 92660

EXAMINER

LAM, ANN Y

ART UNIT	PAPER NUMBER
----------	--------------

3763

DATE MAILED: 02/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/973,280

Applicant(s)

URICH, ALEX

Examiner

Ann Y. Lam

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 11, 12, 15, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Saaski et al., 5,585,011.

As to claims 1 and 11, Saaski et al. discloses a pump (130), and a non-linear flow restrictor (86) coupled to said pump, see Figure 10 or 11.

As to claims 2 and 12, the non-linear flow restrictor changes a direction of fluid flow, see Figure 10 or 11, and see column 30, lines 34-45.

As to claims 5 and 15, the restrictor includes a tube (86) that has a plurality of bends, see Figure 10 or 11.

As to claim 21, Saaski et al. discloses a method comprising creating a flow of fluid that has a pressure and a flowrate, see column 4, lines 12-39; and restricting the flow of fluid so that a variation in the pressure will create a non-linear change in the flowrate, see column 30, lines 34-45.

As to claim 22, Saaski et al. discloses changing a direction of the fluid flow, see column 30, lines 34-45.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 6-10, 13, 14, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saaski et al., 5,585,011, in view of Dykes 6,273,894.

Saaski et al. discloses the invention substantially as claimed, except for the pump being a peristaltic or venturi device, and except for a cutting tip. Saaski et al. teaches that the pump may be used for infusion of medication, see column 1, lines 20-47, see column 3, lines 1-4, and teaches that the pump may be a piezoelectric pump, see column 4, lines 24-30. But Saaski also teaches that the described invention is by way of non-limiting example, and that modifications, adaptations and variations apparent to those skilled in the art are within the scope of the disclosure, column 101, lines 4-11.

Dykes discloses a peristaltic or venturi pump as a medical pump, see column 3, lines 37-40. Thus, it would have been obvious to provide a peristaltic or venturi pump in the Saaski device, as known medical pumps.

As to claims 6-10 and 16-20, Saaski et al. teaches that the disclosed pump may be used in fluid handling devices which are capable of continually handling fluids over

Art Unit: 3763

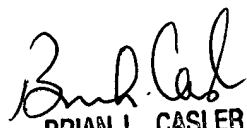
an extended period of time, see column 1, lines 36-41. Furthermore, Dykes teaches a device having a fluid pump in addition to a cutting tip (28) for eye surgery, see column 5, lines 49-51, and column 3, lines 37-42. Thus, it would have been obvious to provide in the Saaski et al. medical device, a cutting tip as taught by Dykes for eye surgery.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is (703) 306-5560. The examiner can normally be reached on T-F 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (703)308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)306-4520 for After Final communications.

A.L.
February 7, 2003


BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3100